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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1124

JACK NEILSON, INC.,

Petitioner,

versus

TUG PEGGY, ET AL.
TUG MARGARET, ET AL.
TUG CARMEN, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR CERTIORARI

a.

This matter has been reported as follows: In the United States Court of Appeals for the Fifth Circuit #27823, Jack Neilson Inc., vs. Tug Peggy, Tug Margaret, Tug Carmen, et al (opinions annexed as appendix 1 and 2)

b.

(i) the judgment in the above matter was originally written June 30, 1970; (annexed as appendix 1).

(ii) the petition for rehearing was denied September 22, 1970, (annexed as appendix 2;) and the court

granted a stay of its mandate on October 6, 1970 until November 6, 1970, and on November 16, 1970 it granted a further stay up to and including December 21, 1970.

(iii) it is urged that under rule 19, of this Honorable court this court has jurisdiction to review the 5th Circuit Court of Appeals decision on federal question in a way to conflict with the applicable decisions of this Honorable Court; viz, the rule of the Ada case.'

c.

The question for review is whether or not the Ada Case[1] is the law of admiralty concerning lease-purchase agreements; and whether or not such contracts should be read and interpreted within the basis laws of the state wherein they are written, or if there is some federalisia law applicable to such contracts.

d.

U. S. Constitution Article III, Sec. 2: The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority — to all cases affecting ambassadors, other public ministers and consuls; — to all cases of admiralty and maritime jurisdiction.

e.

The cases before this court concern three identically written contracts, between identical parties; but concerning three tugs. (a copy of one contract being appendix 3).

There were three identical worded suits filed in 1966 demanding the purchase price of the vessels, less credits, etc. (copy of one of the original suits being appendix 4).

[1] 250 F. 194.

Exceptions to the courts jurisdiction were filed, and on July 18, 1968 the court granted the defendants motion. (copy being appendix 5).

On October 23, 1968 the district court held the July 18, 1968 rule in abeyance and granted plaintiff leave to file an amended complaint. (annexed as appendix 6).

An amended complaint was filed, to which a further exception to the courts jurisdiction was filed and overruled by the court (annexed as appendix 7), writs being allowed to the 5th Circuit Court of Appeals.

6.

(not applicable)

8.

see d above.

b.

If the Ada case[2] is the law of admiralty, then the contracts between the parties must be read and interpreted within the basic laws of the State of Louisiana wherein they were written; and as such they were purchase agreements between the parties; all rights and obligations between the parties being complete and absolute when the contracts were originally signed.

The appellate court cited no state case law upon the subject contracts in question although there is an abundance of cases upon the subject.

cf. Collector of Revenue v. F & H Equipt. Co., 119 So 2d 631, General Talking Pictures Co. vs. Pine Tree Amusement Co., 156 So. 812.

The Louisiana case law holds that agreements having

[2] 250 F 194.

characteristics common to both sale and lease (a charter being a lease of a vessel), but wherein grantee becomes liable for the price, though title is retained by grantor, will not be recognized as written but will be considered as a 'sale', pure and simple. (collector of Revenue v. F & H Equipt. Co., 119 So. 2d 631).

The ultimate legal effect of the court dividing the contract between the parties into two parts; the charter portion thereof and an agreement to purchase portion, is to allow the plaintiff greater legal rights under federalisia law of contract than they would have had under State law of contract.

It is set out in the original complaints that "the defendants voluntarily turned the vessels back", and under the laws and decisions of the State of Louisiana such a turning back amounts to a "dation en paiemente".[3] which would be legal satisfaction of any indebtedness. Under the decision of the appellate court such plea could not be urged. There is the further detriment to defendants of not receiving credit against the vessels sale price if plaintiff had sued in state court upon the purchase. The reason for this is that under state decisions the plaintiff would sue for his purchase price and recognition of his vendors lien privileges, then obtain judgment with recognition of his privilege upon the vessels, which must then be seized and sold credit against the sales price being allowed to defendants.

It is submitted that the rule of the Ada Case[4] is sound in its distinction between federal and state jurisdictions, allowing to the federal courts rule over the seas

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[3] La. Civil Code Art. 2655. — The giving in payment is an act by which a debtor gives a thing to the creditor, who is willing to receive it, in payment of a sum which is due.

[4] 250 F 194.

and to the state court rule over its subjects and their contracts. The Ciudad de la Habana Case[5] is simply not analoguous to the case at bar except in its obiter dictum, as the predicate for the decision was the fact of their being a lack of relations between the United States and Cuba. The Texas & New Orleans Barge Line Inc., vs. Tug Patsy H[6] simply contained an option allowing a purchase at the termination of the charter.

I believe there is a legal distinction between an option to purchase as contained in a contract of charter, and a contract agreeing to purchase couched in terms of a charter option.

WHEREFORE APPLICANTS PRAY: That after due consideration, this Honorable Court grant certiorari upon this matter; and

That in due course of law the exception to the jurisdiction of the federal court be maintained; and

That defendants be formally dismissed; and

For general and equitable relief.

EDWARD J. BURAS

JAMES J. BURAS

GEORGE O'DOWD,
Attorney for Applicants
3329 General Meyer Ave.
New Orleans, La. 70114

[5] 181 F Supp 301.
[6] 279 F. Supp 697.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Writ for Certiorari have been served on opposing counsel, this

..... day of December, 1970.

.....

GEORGE O'DOWD

APPENDIX 1

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 27823

JACK NEILSON, INC.,
Petitioner-Appellant,

versus

TUG PEGGY, ET AL, TUG MARGARET, ET AL,
TUG CARMEN, ET AL,
Respondents-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

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(June 30, 1970)

ON PETITION FOR REHEARING

Before TUTTLE, WISDOM, and GOLDBERG, Circuit Judges.

WISDOM, Circuit Judge: The Court on May 5, 1970, dismissed this interlocutory appeal under Fed. R. App. P. Rule 5(a). The petition for permission to appeal appeared to have been filed two days after the expiration of the ten-day period allowed for filing such

petitions. The Court has now learned that the tenth day fell on Sunday, March 31, 1969, and that appellant's counsel timely filed his petition with the Clerk of Court shortly before the close of business on Monday, April 1, 1969, but a newly employed clerk mistakenly waited until April 2, 1969, to mark the petition "Filed". Accordingly, we grant the petition for a rehearing, vacate our order of May 5, 1970, and allow the appeal from the interlocutory order.

• • •

The owner of three vessels seeks to recover unpaid monthly rentals for the lease of the vessels under a lease-purchase agreement cast in the form of a bareboat charter. We hold that the charter provisions of the contract are maritime in nature, are severable, and within the admiralty jurisdiction of the district court.

In April 1965 Apache Towing, Inc., entered into three contracts with Jack Neilson, Inc., covering the lease for sixty months and purchase of three tugboats. The contracts are entitled "Bareboat Charter Party and Option". The terms of the three contracts are virtually identical, except that the monthly rental ($800, $667, and $533 for the Peggy, the Carmen, and the Margaret respectively) and the stipulated purchase price ($60,000, $50,000, and $40,000 respectively) are different for each vessel. The terms and the conditions are characteristic of a typical bareboat charter. Each contract, however, contains an option to purchase the vessel during the charter period, "with credit against above purchase price and 'add-on' interest thereon accruing at six percent per annum for all charter hire

previously paid." The contract also provides: "At the termination of the sixty month period, The Charterer agrees to purchase the vessel and the Owner agrees to sell said Vessel to the Charterer for cash" $30,000, $25,000, $20,000 for the Peggy, the Carmen, and the Margaret respectively. Except as to the stipulated amount, each contract provides that:

> If Charterer fails to pay any charter hire or other amount herein provided after the same is due and payable, or if Charterer fails to observe, keep or perform any other provisions of this charter party required to be observed, kept or performed by Charterer, then upon written notice of said default Charterer is to have (30) thirty days from receipt of said notice to purchase said Vessel for $50,000.00 plus six (6%) per cent interest per annum accrued thereon up to the time of the purchase. The full charter hire previously paid as of the date of the written notice shall be applied toward the purchase price and accumulated interest."

As early as December 1966, Apache was three months in arrears on the charter hire. The charterer then voluntarily returned the ships to their owner.

In May 1966 Neilson, as owner of the Tug "Peggy", brought a libel and complaint against Apache and others[1] for "breach of contract, civil and maritime". Neil-

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[1]Cimmeron Towing, Inc., Henry A. Billiot, d/b/a Marco Towing Co. and two guarantors, Edward L. Burns, Sr. and James J. Burns.

son sued for the full amount of the purchase price of $80,000 less $4000, the amount previously paid by Apache. In addition, Neilson asked for $7500 for the cost of repairs made necessary by damage to the Tug Peggy during Apache's operation of the vessel. Neilson brought similar actions to recover the purchase price of $50,000 for the Carmen and $40,000 for the Margaret. In these actions too the complainant asked for costs of repairs to the vessels. The cases were consolidated in the district court.

The defendants answered, asserting, among other defenses, that the "libellant failed to provide a seaworthy vessel at the inception of the charter". Shortly thereafter, the defendants filed an exception to the jurisdiction on the ground that the subject matter of the dispute was a non-maritime ship-purchase agreement. The district court upheld the exception but granted the plaintiff leave to file a supplemental amended complaint.

The amended complaint bears little resemblance to the original complaint. It rests entirely on those terms of the parties' agreements which relate to chartering the vessels. Neilson now avers that the contract was a bareboat charter party; that Apache failed to pay the monthly charter hire; that Neilson is entitled to sixty months of rentals on each of the three vessels, less a deduction for the amounts the charterer previously paid as charter hire. The total claim now asserted for the charter payments is $119,920 as against the original claim of $150,000 for the purchase price subject to a deduction for the charter rentals paid.

Benedict broadly states the generally accepted rule governing the extent of admiralty jurisdiction over contracts.

> The celebrated and learned commentators upon the maritime codes and other writers of textbooks upon the maritime law, such as Selden, Grotius, Stracha, Bynkershoek, Valin, Stypmanus, Loccenius, Casa Regis, Emerigon, Kuricke, Pothier, Roccus, Malynes, Cleirac, Boucher, Boulay Paty, Pardessus, Vennius, Lubeck, Targa and many others, whose works have been the universally known and everywhere conceded evidence of the admiralty and maritime law, have not adopted any narrow rule respecting the extent of the admiralty jurisdiction. The question, whether the cause of action arose within the limits of a country, or in a harbor, or was founded upon an instrument, sealed or unsealed, or made on shore or on shipboard, in a usual or unusual form, appears never to have entered the minds of those legislators and jurists. They have always looked solely to the maritime nature and character of the transactions, which cannot depend upon any such considerations, and they treat of all cases of service, contract, tort or accident relating to ships, shipping and maritime commerce. It is now settled law in the United States that the jurisdiction of admiralty in matters of contract depends upon the subject-matter, *i.e.*, the nature and character of the contract, and that the English rule which

> conceded jurisdiction (with few exceptions) only to contracts made and to be performed upon navigable waters, is inadmissible, the true criterion being that the contract has reference to maritime service or maritime transactions.

1 Benedict, The Law of American Admiralty, § 62, p. 127 (6th Ed. 1940).

Unfortunately, "when a high-level abstraction such as 'maritime' has to be used to draw a line between concrete cases", the "test of maritime subject-matter" is difficult to apply.[2] Not infrequently the test has resulted in anomalies. Suits or contracts for the building and sale of vessels "might be thought to be included, but actually are not" maritime in nature.[3] Yet ship mortgages are within admiralty jurisdiction.[4]

Here, no doubt the owner of the three tugs hoped that the charterer would exercise the option to purchase during the charter period. No doubt the owner felt comfortable about the charterer's agreement to purchase at the expiration of the charter. But the subject of each contract was a vessel that might be afloat and

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[2]Gilmore and Black, The Law of Admiralty, p. 25 (1957).
[3]Id. p. 26.
[4]See Detroit Trust Co. v. The Thomas Barlum, 1934, 293 U.S. 21, 55 S.Ct. 31, 79 L.Ed. 176, sustaining the constitutionality of The Ship Mortgage Act, 41 Stat. 1000 (1920), 46 U.S.C. § 921 et seq. (1946). See also Morrison, The Constitutionality of the Ship Mortgage Act of 1920, 44 Yale L. J. 16 (1934).

in the control of the charterer for five years. The contract was drawn therefore with maritime problems in mind, particularly problems relating to bareboat charters. No one can possibly read the complicated contract sued on in this case and arrive at any other conclusion than that the dominant provisions relate to operation of a vessel by a charterer and an admiralty court, aided by procters, is the best qualified tribunal to undertake the task of construing the contracts.[8]

The defendants' argument against the court's taking jurisdiction comes from an undiscriminating applica-

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[8]The policy argument was well expressed by Judge Rozel L. Thomsen in Flota Maritima Browning v. The Ciudad de la Habana, D.C. Md. 1960, 181 F.Supp. 301, 309:

> There are valid arguments in favor of the proposition that admiralty courts should take jurisdiction over claims arising out of contracts for the sale of a ship, though not for specific performance of contracts of sale, and even stronger arguments for taking jurisdiction over claims arising out of lease-purchase contracts. For example, admiralty courts are generally familiar with the subject matter of such contracts and with the related questions which frequently arise; admiralty procedure is usually more flexible and speedier than state court procedure in comparable cases; the admiralty rules with respect to attachment, release on stipulation, and the like, are uniform throughout the country and are well known to admiralty lawyers, whereas the attachment laws and practices of the several states are very different and are ill-adapted to cases involving vessels engaged in navigation, where seamen, cargo owners and others may have all sorts of conflicting claims and liens, which admiralty courts and the admiralty bar are accustomed to handle. ¶ The traditional subject matter test — whether the contract relates to the navigation, business or commerce of the sea — would seem to be met by contracts for the sale of a ship. Even the more restrictive statement of the test — whether the contract concerns transportation by sea, or is one of navigation and commerce within navigable waters — is met by the lease provisions of the typical lease-purchase contract, including the contracts involved in this case.

tion of the petrified rule that ship-sale contracts are not within admiralty jurisdiction. "This seemingly well-settled rule arose as an analogy to a case[6] which is inconsistent with basic principles governing the admiralty jurisdiction of United States courts. Even today the precedent for such a rule is scant." Note, Admiralty Jurisdiction and Ship-Sale Contracts, 6 Stan. L. Rev. 540 (1954).[7]

The first and most influential case for the proposition that ship-sale contracts are outside admiralty jurisdiction was *The Ada*, 2 Cir. 1918, 250 Fed. 194. In *The Ada* the charterer had an option to purchase for the sum specified in the charter party as the hire. The owner withdrew the vessel, and the charterer filed a libel in rem against the vessel and in personam against the owner to recover damages sustained by the charterer, both for breach of the charter and for breach of the contract of sale. The owner filed exceptions to the libel, arguing that the damages claimed arose from a breach of contract for the sale of the vessel, a cause of action not within the admiralty jurisdiction.

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[6]People's Ferry Co. v. Beers, 1857, 20 How. 393, held that "shipbuilding contracts are not within admiralty jurisdiction. But the Court emphasized that the contract was "made on land, to be performed on land".

[7]This note is an important commentary on the origin of the ship-sale rule and its history in the courts. The note was relied on heavily in Floyd Maritima Browning v. The Ciudad de la Habana both in the district court, D.C. Md. 1960, 181 F.Supp. 301, and in the Court of Appeals, 4 Cir. 1966, 363 F.2d 733. We too rely heavily on it.

The charter was only for six months; the purchase-price was the same as the total charter payments; the so-called charterer had notified the owner that it would purchase the vessel and had tendered the purchase-price. The language of the opinion clearly shows the court's intention to limit the effect of the decision:

> If this charter had provided for the use of the vessel for six months at a specified charter hire, and had given the charterer the option thereafter to purchase at a fixed price, there would be two separate causes of action; the former justiciable either in admiralty or at law and the latter at law only. But the right to use and the right to buy the steamer in this case were inseparably connected. The price for the use for six months was the same as the price for the absolute ownership. Obviously no one would fail to exercise such an option. All the provisions of the agreement show that the main intention was a contract of sale.

The Ada, 2 Cir. 1918, 250 Fed. 194 at 195-196.

In *Floyd Maritima Browning v. The Ciudad de la Habana*, D.C. Md. 1960, 181 F. Supp. 201, the lease-purchase contracts provided for long term bareboat chartering (as in the case here under review) — fifteen years under one contract seven years under the other with certain options to the lessee and to the owner. Chief Judge Thomsen held:

> If the several contracts had run to nearly their full course, the lessee would undoubtedly have exercised its option to purchase, because the payments for rental or charter-hire would have nearly equalled the purchase price. But many events might have occurred in the early part of the term to cause the lessee to terminate the contract. ¶ *The contracts in the instant case are therefore different from the contract in The Ada, which ran for only six months and gave no similar termination option to the lessee.* Yet two experienced admiralty judges, Judge Smith and Judge Hand, held in that case that the charter provisions of the lease-purchase contract were within the admiralty jurisdiction, although they were reversed by the Second Circuit, for different reasons stated by the several judges...." (Emphasis added.)

181 F. Supp. at 309-310. Judge Thomsen observed with regard to *The Ada:*

> The cause of action for breach of the charter provisions came on [in the district court] before Judge Learned Hand, sitting in admiralty. Judge Hand found that the owner had wrongfully withdrawn the vessel and was *liable to the charterer for the loss sustained by it as charterer,* although the damages for breach of the sale provisions were not recoverable in admiralty. 239 F. at page 372, 250 F. at page 195. The Court of Appeals reversed, on the ground that the District Court lacked juris-

> diction. Each of the appellate judges filed an opinion. Without the citation of any authority whatever, they agreed that a contract for the sale of a ship is not a maritime contract; they seemed to agree, each for different reasons, that the *charter provisions and the sale provisions were inseparable*, and that the contract should be treated as a contract of sale. (Emphasis added.)

181 F. Supp. at page 308.

When *The Ciudad de la Habana* reached the Court of Appeals for the Fourth Circuit that Court agreed with Judge Thomsen "largely for the reasons expressed by him in a thoughtful opinion". *Flota Maritime Browning de Cuba, Sociedad Anonima v. Snobl*, 1966, 363 F.2d 733, 735. In a careful analysis of *The Ada*, Chief Judge Haynsworth went beyond the district court's opinion, however, and added:

> From the three separate opinions filed by the court [in The Ada], however, it is apparent that each judge considered the agreement primarily one for the sale of the vessel. The *lease agreement there was limited to a period of six months. . . . At the time of the breach of the contract, the charterer* [in *The Ada*] *had in fact exercised his option to purchase, thereby converting the agreement into a contract of sale.* ¶ *Under other lease-purchase agreements, however, claims may arise which are clearly founded upon the lease provisions and*

> *which would be within admiralty jurisdiction.* The primary opinion in The Ada clearly recognized this possibility. ¶ In this case the agreements were to extend for *periods of seven and fifteen years.* The economic compulsion to exercise the purchase option is clearly not so great where the cost of use for a long period approximates purchase price as it is where the cost of use for six months is the same as the purchase price. Nor is there an indication that the rentals here were so unreasonably high as to suggest a disguised sale *Although the contract could have been converted into a sale at the option of either party, up to the time of its termination it had not been.* Unlike the contract in The Ada, at the time the libel was filed, the parties had operated only under the lease provisions and *the purchase-sale options were unexercised. The character of the contract was thus fixed, as between the parties, as a charter.* (Emphasis added.)

363 F.2d 733, at 736. The underscored words in this opinion show that the case under review by this Court falls within the principles expressed in *The Ciudad de la Habana* rather than within a wooden application of the supposed *Ada* rule.

Aside from *The Ciudad de la Habana*, which distinguished *The Ada*, there is very little direct authority. *Grands Banks Fishery Co. v. Styron (The Caracara)*, S.D. Me. 1953, 114 F. Supp. 1, followed *The Ada*, but in that case the plaintiff had purchased a fishing vessel

then at sea and had paid the full purchase price. Upon the boat's arrival, the plaintiff discovered major defects and brought a libel for breach of warranty in a federal district court. There was no charter party involved. Even so, Judge Thomsen, discussing *The Caracara* in *Ciudad de la Habana*, pointed out: "Since it is agreed that admiralty has jurisdiction of contracts for repair of a vessel, and repairs often give rise to a maritime lien, the decision in *The Caracara* seems particularly anomalous". 181 F. Supp. at 308, n. 10.

In *Texas and New Orleans Barge Line, Inc. v. Tug Patsy H*, E.D. La. 1968, 279 F. Supp. 697 the district court had before it a lease-purchase contract in the form of a charter party that was similar to the contracts sued on in the case before this Court. The libellant, (Jack Neilson) as the owner of the Tug Patsy H entered into a bareboat charter party with Nagel Towing Co. to lease the vessel *for forty-eight months*. The charter contained a provision allowing Nagel Towing Co. to purchase the tug at a stipulated price at the termination of the charter period. The respondents argued that because of this provision the contract was "not a charter agreement at all but rather amounted to a sale of the tug" governed by Louisiana law; that under Louisiana law it would be against public policy to allow the libellant to recover for rentals owed at the time the vessel was surrendered to the owner. The defendants make the same argument here. Chief Judge West gave this argument short shrift: "The Court finds no merit to these contentions. In a charter party the parties may contract as they choose, *J. B. Effenson Co. v. Three Bays Corp.*, 5 Cir. 1956, 238 F.2d 611, and

they are of course bound by the contract as written .... This charter party was a bareboat rental of the Tug Patsy H for a specified time at a specified price and nothing else. It was not a sale". 279 F. Supp. at 698.

Effenson, cited by Judge West, was a civil action upon a charter party. The court held that rights under the charter party were covered by maritime law and not the common law or statutory law of a state. To allow a plaintiff to elect a state forum would defeat the uniformity the Constitution requires in maritime law. The case is not without bearing here. The constitutional objective of uniformity and the intentions of the parties would surely be defeated if the Neilson-Apache charter parties were subject to the Louisiana Deficiency Judge Act, LRS 13-4106, or to Louisiana public policies and decisions governing land-based conventional obligations, entertain a bill or libel for specific performance ... The jurisdiction embraces all maritime contracts, torts; injuries or offenses and *it depends upon the nature of the contract*, and is limited to contracts, claims, claims and services *purely maritime* and touching rights and duties appertaining to commerce and navigation". (Emphasis added.) *Rea v. The Eclipse*, 1890, 135 U.S. 599, 608, 10 S.Ct. 873, 34 L.Ed. 269. But, as pointed out in *The Cuidad de la Habana*, "While the principle is one of general validity when the non-maritime elements are substantial and inseparable from the maritime elements, it has long been recognized that where the maritime elements of a contract are susceptible to separate adjudication admiralty jurisdiction may be exercised to that extent." 363 F.2d at 735. The Fourth Circuit cited *Compagnie Francaise*

de Navigation a Vapeur v. Bonnaisse, 2 Cir. 1927, 19 F.2d 777; *Eastern Massachusetts Street Ry. Co. v. Transmarine Corp.*, 1 Cir. 1930, 42 F.2d 58; *Berwind-White Coal Mining Co. v. City of New York*, 2 Cir. 1943, 135 F.2d 443.

Despite the plaintiff's false start in his original petition, it is now evident that the subject matter of the dispute is a bareboat charter. (1) During the term of the charter the charterer did have an option to purchase, but it was not exercised. (2) In the event of default in the monthly payments, the charterer had an option to purchase within thirty days of notice of default. But the charterer made it plain that he could not pay the monthly rentals, much less buy the vessels. (3) The charterer agreed "at the termination of the sixty-months period" to purchase each vessel for half of the agreed valuation (identical with the stipulated purchase price option). But the parties never reached the termination of the sixty-months period. The operable provisions of the contract therefore relate only to the bareboat charter. And the contract provided:

> No cancellation or other termination of this agreement by either party shall in any way relieve Charterer of liability for the payment of any sum or sums due or to become due Owner under this agreement, or any damages which Owner shall have sustained, whether by omission or commission.

Unlike *The Ada*, here the charterer made no offer to purchase the vessels; the charter was for a long term;

the total monthly payments were considerably less than the stipulated price; as indicated by the testimony of the charterer's president, the parties regarded the contract primarily as a bareboat charter, not as a contract to purchase. Well they should in view of the vessels' exposure for five years to the hazards of the sea.

We question the validity of a broad and mechanical formulation of *The Ada* rule that treats as non-maritime all charter parties to which is added an option or agreement to purchase. We prefer to follow the *Ciudad de la Habana*. In any event, on the facts before us the case under review is distinguishable from *The Ada*. We hold that the contracts here were primarily charter parties; that the provisions relating to the bareboat charter were maritime in nature and severable from the unexecuted options and the charterer's agreement to purchase on the termination of the charter.

We express no opinion as to how much of the total charter hire, if any, the plaintiff is entitled now to recover.

The district court's order denying the defendants' motion to dismiss the complaint is AFFIRMED.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

APPENDIX 2

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 27823

JACK NEILSON, INC.,
Petitioner-Appellant,
versus

TUG PEGGY, ET AL, TUG MARGARET, ET AL,
TUG CARMEN, ET AL,
Respondents-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

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(September 22, 1970)

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

(Opinion June 30, 1970, 5 Cir., 1970, ____ F.2d ____)

Before TUTTLE, WISDOM, and GOLDBERG, Circuit Judges.

PER CURIAM: The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the

Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

BAREBOAT CHARTER PARTY AND OFFER

This Charter Party made and concluded upon in the Town of Harvey, State of Louisiana, on the 11th day of April, 1965, between Jack Nelson, Inc., Owner of the [redacted] Fleet Official No. 270308, hereinafter referred to as "Owner", and Aquatic Towing Co., Inc., a Louisiana corporation, residing mail at P. O. Box 469, Harvey, Louisiana, hereinafter referred to as "Charterer",

WITNESSETH:

ARTICLE I.

Owner agrees to and does hereby charter bareboat with option to purchase said vessel during the charter term for ($0,000.00), with credit against above purchase price and "all-on" [redacted] between accruing at six (6%) per cent per annum for all charter hire previously paid hereunder, and Charterer agrees to and does hereby hire bareboat, under the terms and conditions set out in this Charter "as is" when delivered to Charterer, the [redacted], hereinafter referred to as "Vessel", for a period of fifty (50) months beginning with the delivery of the vessel to Charterer, afloat in the New Orleans area, Owner's option, and expiring sixty (60) months thereafter, unless prior to the expiration day the Vessel shall become a total loss, actual or constructive (no constructive total loss shall be defined in the policies of insurance hereinafter referred to), or unless this Charter is sooner cancelled as hereinafter provided. Time from the beginning day to the expiration day is sometimes herein referred to as the "charter period". It is hereby agreed that acceptance of Vessel and beginning of Charter period is April 11th 1965.

ARTICLE II.

a) Upon delivery of the Vessel by Owner to Charterer, the Vessel to the best of Owner's knowledge and belief then shall be tight, staunch, and seaworthy, but Owner mines no warranty or representation in this regard and none shall be inferred. Charterer's acceptance of Vessel shall be conclusive evidence that the Vessel is tight, staunch and seaworthy and fit and proper for the service for which Charterer will use it, and its acceptance by Charterer shall constitute a full performance by Owner as to all of Owner's obligations as to the furnishing of a Vessel which is tight, staunch and seaworthy and fit and proper for the service for which Charterer will use it. Thereafter, Charterer shall not be entitled to make or assert, against Owner any claim arising out of, or connected with, the condition of the Vessel, her engines, auxiliaries, tackle, apparel, furniture and equipment; and Charterer shall hold Owner harmless against any liability to any other party alleged to have arisen by reason of the condition of the Vessel, her engines, auxiliaries, tackle, apparel, furniture and equipment.

b) Owner and Charterer shall make an inventory (and appraisal of the spare or replacement parts, tackle, apparel, furniture, equipment, fuel, lubricating oil and stores on the Vessel upon delivery, and Charterer shall pay Owner therefor upon acceptance of the Vessel.

ARTICLE III.

a) Beginning with the delivery of the Vessel to Charterer, during the charter period and until return of the Vessel by Charterer to Owner afloat in the New Orleans area, Owner's option (unless a different redelivery point shall be mutually agreed upon by the Owner and Charterer), Charterer shall maintain the vessel in the same order and condition, ordinary wear and tear excepted, as when received by Charterer. Charterer shall pay to Owner charter hire at the rate of $ [illegible] per month in advance, the first payment of charter hire [illegible] for period [illegible] April 17th noon, 1965 through May 16th noon 1965, and thereafter charter hire shall be paid monthly in advance on the same day of each calendar month. All payments of charter hire shall be made at the office of Owner at P. O. Box 231, Harvey, Louisiana, unless and until Owner shall elect to receive charter hire elsewhere and shall so notify Charterer in writing.

b) In the event of a total loss of the Vessel, actual or constructive (as constructive total loss shall be defined in the policies of insurance hereinafter referred to), charter hire shall cease as of the date of such total loss; otherwise charter hire shall not cease or be suspended for any reason during the charter period and shall be paid by Charterer until redelivery of the Vessel by Charterer to Owner (subject to the agreement of Charterer to continue this charter party or to purchase the Vessel as herein provided).

ARTICLE IV.

a) Upon tender of the Vessel for redelivery from Charterer to Owner, it shall be drydocked at New Orleans, unless some other place be mutually agreed upon between Owner and Charterer, and a joint survey made by Owner and Charterer to determine the condition of said Vessel and written report of such survey shall be made. The cost of such drydocking and surveying shall be borne by Charterer and Owner jointly in the proportion of one-half each. The survey shall be conducted by a surveyor chosen jointly by Owner and Charterer, and if they do not agree on a single surveyor, then the Owner and Charterer shall each select one representative, and if they do not agree, the two surveyors shall choose an umpire and the determination of any two of the three shall be final and conclusive upon both Owner and Charterer. Should the two surveyors fail to agree upon the third surveyor, he shall be appointed by a judge of the United States District Court for the Eastern District of Louisiana.

b) If upon tender of the Vessel for redelivery by Charterer to Owner and after survey any dispute should arise between Owner and Charterer with respect to the order or condition of the Vessel, or with respect to liability for painting, repairs, renewals, reconditioning, cleaning, replacement, or any other expense, either Owner or Charterer, without prejudice to its contention, may repair or recondition the Vessel or make and pay for such painting, repairs, renewals, reconditioning, cleaning, replacement or any other expense, or any part thereof, and may recover the cost thereof from the party for whose account it may properly be under the terms of this charter party; and if liability therefor be determined to be that of Charterer, Charterer shall pay charter hire and the premium on the insurance policies hereinafter provided for during the period necessary to effect the reconditioning of the Vessel or the painting, repairs, renewals, cleaning, replacement or any other expense, or any part thereof, for which Charterer may be liable.

ARTICLE V.

a) Subject to agreement of the underwriters of the marine insurance provided for in Article VIII, hereinafter, Charterer may use, operate and navigate the Vessel for all lawful purposes in the inland navigable waters of the United States, and offshore in the Gulf of Mexico. In no event shall the Charterer use, operate or navigate the Vessel in waters where there is an insufficient depth of water for the Vessel to lie safely afloat at all times and under all conditions, or outside of the navigation limits then prescribed in any policy of insurance on the Vessel.

b) Charterer shall at all times operate the Vessel carefully and efficiently and shall at no time misuse or abuse it. In the operation and maintenance of the Vessel, Charterer shall satisfy and comply with all insurance requirements, the requirements of the United States Coast Guard and of any and all other Government agencies having jurisdiction of the Vessel and of any barges or other craft and their cargoes towed by the Vessel, and passengers aboard the Vessel. Charterer shall not make any structural additions or alterations to the Vessel at any time without the prior written consent of Owner.

c) Charterer at all times, at its sole cost and expense, shall maintain and keep the Vessel, its engine, auxiliaries, tackle, apparel, furnishings and equipment seaworthy, painted, clean and in good running order and condition. Owner shall have the right to inspect the Vessel at all reasonable times during the charter period and when so requested Charterer shall advise Owner of the whereabouts of the Vessel and facilitate Owner's inspection thereof.

d) Charterer shall, at its own cost and expense, or by its own procurement, man, victual, use, operate, navigate, supply, maintain, repair and fuel the Vessel and shall pay all costs, claims, charges and expenses of every kind and nature whatsoever, with respect to or incident with, or relating to the foregoing and, in connection therewith, shall strictly comply with and be bound by the provisions of Article VI hereof. Charterer shall keep the Vessel properly manned, equipped and supplied at all times during the charter period. Charterer shall furnish at its own cost and expense all rigging, cable, rope, bridles, chains, shackles, catchets, towing and mooring equipment, and all other equipment, including galley, deck and engine equipment. Owner makes no warranty or representation that any of the foregoing described items will be on board the Vessel at the time of delivery to Charterer. Charterer shall use reasonable care in the selection of masters and crew employed by Charterer in the use, operation and navigation of the Vessel and shall require said masters and crew to be duly licensed in accordance with law, if, whenever and wherever licensed personnel may be required by law.

e) Charterer shall pay or cause to be paid to the proper authority, when and as they become due all of pilotage and other taxes, licenses fees, assessments, and similar charges which at any time during the term of this charter may be taxed, assessed or imposed upon the Vessel, Owner or Charterer with respect to, or upon the use, operation or navigation of the Vessel (excluding the Owner's income from the Vessel); provided, however, that nothing herein contained shall be construed to prevent the Charterer from validly and in good faith contesting the applicability or validity of any such tax, assessment or similar charge, but such contest shall be subject to the provisions of Article VI(a) of this charter party.

f) Charterer shall, in the use, operation and navigation of the Vessel, comply with all applicable Federal, State, Municipal and Local laws and with the rules, orders, regulations, directives and requirements of any departments, commissions and bureaus, and with all local ordinances and regulations, and shall indemnify and hold Owner and the Vessel harmless from all libels, maritime and other liens, claims, charges, encumbrances, suits and penalties which may be imposed upon, or filed against, Owner or upon the Vessel, by Federal, State, Municipal or Local authority or by any departments, commissions or bureaus thereof by reason of any asserted violation by Charterer or the Vessel, of such laws, rules, orders, ordinances, regulations, directives, or requirements.

ARTICLE VI.

a) Neither Charterer nor any of its officers, employees or agents, nor the Master or any other officer or member of the crew of the Vessel shall have any right, power or authority to create, incur, suffer or permit to be placed or imposed upon the Vessel any maritime or other lien, encumbrance or charge whatsoever or to incur debt, obligation or charge upon the credit of the Vessel. In the event, notwithstanding the foregoing, a maritime or other lien, encumbrance or debt shall be placed upon the Vessel, or in the event the Vessel shall be levied against or taken into custody by virtue of any legal proceedings in any court, based upon a claim or cause of action, valid or invalid, founded or unfounded, alleged to have arisen during the term of this charter party, Charterer shall, within fifteen (15) days cause the Vessel to be released and the asserted libel, maritime or other lien, encumbrance or charge to be discharged or secured.

b) Charterer shall carry and keep a copy of this charter with the Vessel's papers and in the Charterer's office and shall exhibit or cause to be exhibited a copy of this charter party to all persons, firms and corporations having business with the Vessel which might give rise to any maritime or other lien or claims, encumbrances or charge whatsoever. Charterer shall notify all persons, firms and corporations furnishing repairs, stores, supplies, fuel or other necessaries to the Vessel that neither Charterer nor any of its officers, employees or agents nor the master or any other officer or member of the crew of the Vessel has any right, power or authority to create, incur or suffer or permit to be placed or imposed upon the Vessel or maritime or other lien, encumbrance, claim or charge whatsoever or to incur any debt, obligation or charge upon the credit of the Vessel, and such notice so far as practicable, shall be in writing. Charterer shall promptly notify Owner of the institution of any proceedings against the Vessel.

c) Charterer shall, at all times during the charter period, prominently display on the Vessel notices to the effect that the Vessel is the property of Jack Neilsen, Inc., and that no person, firm or corporation has any authority to create, incur or suffer or permit to be placed or imposed upon the Vessel any lien, debt, charge or encumbrance whatsoever.

d) Upon redelivery of the Vessel by Charterer to Owner, it shall be free and clear of all maritime or other liens, encumbrances, claims and charges of whatsoever nature and kind. If after redelivery of the Vessel by Charterer to Owner, there be asserted against the Vessel or Owner any claim or maritime or other lien, encumbrance, claim or charge of any nature and kind whatsoever, alleged to have arisen during the charter period,

whether valid or invalid, founded or unfounded, Charterer, at its sole cost and expense, shall cause such maritime or other lien, encumbrance, claims and charges of whatsoever nature and kind to be discharged or secured forthwith, and shall indemnify and hold the Vessel and Owner harmless against all liability therefor.

ARTICLE VII.

Charterer hereby agrees to and does hereby waive all claims for loss, damage to, or expense incurred in connection with the towage of barges and other craft by said Vessel in tow of the Vessel, which barges and other craft in tow of the Vessel are owned or chartered by Charterer or by Charterer's subsidiary or affiliated or inter-related companies. Charterer shall indemnify and hold the Vessel and Owner harmless against all liability and claims for losses and damage sustained, or alleged to have been sustained, by any vessel and any cargo thereon, however owned, while in tow of the Vessel or for which Owner or the Vessel are alleged to be liable.

ARTICLE VIII.

a) The obligation of Charterer at the termination of this charter party, however terminated, to return to Owner the Vessel in the same order and condition as when received by Charterer, ordinary wear and tear excepted, shall be absolute and Charterer shall not be excused therefrom in whole or in part by reason of any happening or occurrence whatsoever, including, without limitation, Acts of God, force majeure, and willful or negligent acts of third parties for which said third-parties may be liable. While in the possession of Charterer, the Vessel shall be at Charterer's risk of loss and damage however caused. For the purpose of this charter party and as between the Owner and Charterer, the value of the Vessel is fixed at the sum of $60,000.00. In the event of loss or inability of Charterer to return the Vessel to Owner for any reason, Charterer shall pay Owner the said sum of $60,000.00 less net charter hire paid before the loss, subject to a credit of any amount actually collected by Owner from the insurances hereinafter recited, and Charterer shall remain liable to Owner for any uncollected balance. In the event that any underwriter shall deny liability, Charterer shall make due and proper payment to Owner, upon Owner subrogating Charterer to all rights and causes of action against the underwriter.

b) Charterer shall procure, maintain and provide, at its own cost and expense during the charter period and until Owner will have accepted redelivery of the Vessel (including time necessary to effect the repair or reconditioning of the Vessel and any painting, repairs, removals, reconditioning, cleaning and replacement for which Charterer may be liable under the terms of this charter party), marine insurance on the Vessel written on "Vessel Syndicate Form 1946 revised March 1, 1946 (53-H)" or on a substantially equivalent form approved by Owner (including collision, tower's liability and Inchmaree coverage satisfactory to Owner) in the sum of $ 60,000.00 with a deductible average not exceeding the sum of $ 1,500.00. Charterer shall also procure, maintain and provide at its sole cost and expense during the charter period and until Owner will have accepted redelivery of the Vessel (including any time necessary to effect the repair or

reconditioning of the Vessel and any painting, repairs, renewals, reconditioning, cleaning and replacement for which Charterer may be liable under the terms of this charter party) P & I insurance in the sum of $ 60,000.00 with a deductible average not exceeding $ 500.00 [illegible] of a form satisfactory and acceptable to Owner. Both the marine and P & I insurance shall be written with companies satisfactory to Owner and shall name Owner and Charterer as assureds thereunder, with losses payable to them as their respective interests may appear. Owner shall be furnished with either originals or certified copies of the insurance policies in forms satisfactory to Owner. Such insurance policies shall provide that Owner shall be given fifteen (15) days advance notice of cancellation.

c) The proceeds of all insurance referred to above shall be available as follows: (1) In the event of total loss of the Vessel, either actual or constructive (as constructive total loss is defined in the applicable insurance policies), the proceeds of the insurance shall be paid to Owner and Charterer as their interests may appear; (2) In the event of damage to the Vessel less than a total loss, either actual or constructive, if the cost of repair, restoration or replacement will be actually paid by Charterer, the proceeds of the applicable policies of insurance shall be paid to Charterer; otherwise, the proceeds shall be paid to Owner. Any property restored or replaced shall be the property of Owner and so identified and shall be subject to all the terms and provisions of this charter party; (3) In the event of any third-party claims, whether for personal injury, death claim or for property damage, which shall constitute claims under any of said insurance, the proceeds of the insurance shall be made available to Charterer to reimburse Charterer, to the extent of the insurance collected, for any of its funds used to settle or pay any such claim or any judgment resulting therefrom, if paid or discharged by Charterer and provided such payment or discharge by Charterer shall be to the full acquittance and discharge of Owner and the Vessel; otherwise such insurance proceeds shall be paid to Owner.

d) Charterer shall pay all deductible averages in any insurance and in the event of any damage or injury to, or loss of the Vessel or any third-party claim for any cause not covered by said insurance, Charterer shall make good said damage, injury, loss or third-party claim at its own cost and expense and shall indemnify and hold harmless the Vessel and Owner against all suits, claims and demands in respect to said damage, injury, loss or claim. Charterer shall pay for any loss or damage covered by said insurance for which no reimbursement is paid for any reason or incomplete reimbursement is made by reason of the deductible provisions of said insurance or any other reason.

ARTICLE IX.

Charterer shall indemnify, hold harmless and defend the Owner and the Vessel from all libels, maritime liens and other liens, suits, encumbrances, charges, claims, liabilities, costs and expenses of whatsoever nature and kind, arising out of the use, operation, navigation, manning, victualing, supplying, repairing, maintaining and fueling of the Vessel or out of any act in violation of this charter or out of any fault or neglect of Charterer, its officers, agents, servants or employees.

ARTICLE X.

Charterer shall not, without prior written consent of Owner, sell, assign or pledge this Charter or any of its rights or obligations hereunder and shall not, without the prior written consent of Owner, subcharter, let or hire or permit the use by others of the Vessel.

ARTICLE XI.

The failure of Owner to insist in any one or more instances upon performance of any of the terms, covenants and conditions of this charter party shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition, but Charterer's obligation with respect to such future performance shall continue in full force and effect.

ARTICLE XII.

Owner shall at all times have the right to invoke any remedy permitted by law, in equity or in admiralty for the protection of its interest hereunder. Charterer hereby expressly waives all rights which it may have to be given notices by Owner other than as provided herein.

ARTICLE XIII.

If Charterer fails to pay any charter hire or other amount herein provided after the same is due and payable, or if Charterer fails to observe, keep or perform any other provisions of this charter party required to be observed, kept or performed by Charterer, then upon written notice of said default Charterer is to have (30) thirty days from receipt of said notice to purchase said Vessel for $60,000.00 plus six (6%) per cent interest per annum accrued thereon up to the time of the purchase. The full charter hire previously paid as of the date of the written notice shall be applied toward the purchase price and accumulated interest.

ARTICLE XIV.

At the termination of the sixty (60) month period, Charterer agrees to purchase the Vessel and Owner agrees to sell said Vessel to Charterer for $30,000.00 cash.

No cancellation or other termination of this agreement by either party shall in any way relieve Charter of liability for the payment of any sum or sums due or to become due Owner under this agreement, or any damages which Owner shall have sustained, whether by omission or commission.

ARTICLE XV.

The address of Charterer for the sending of notices under this agreement is P. O. Box 409, Harvey, La., and the address of Owner for the sending of notices under this agreement is P. O. Box 201, Harvey, La. Any notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper, addressed as aforesaid, registered and deposited, postage and registry fees prepaid, in a post office regularly maintained by the Government of the United States of America.

ARTICLE XVI.

Owner may assign this charter party or any interest therein, and in such event Owner shall remain obligated to see that the conditions, terms and obligations imposed upon it by this charter party are fulfilled and performed in each and every detail.

ARTICLE XVII.

This agreement has been executed simultaneously in several counterparts, and each of such counterparts is deemed to be an original and, all together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Charter Party and Option has been executed as of the day and year first above written by

WITNESSED:

Agnes Bayless

W. H. Wellman

Agnes Bayless

W. H. Wellman

Agnes Bayless

W. H. Wellman

Agnes Bayless

W. H. Wellman

JACK NELSON, INC.

By: Jack Nelson
JACK NELSON, PRESIDENT

APACHE TOWING, INC.

By: Henry A. Billiot
HENRY BILLIOT, PRESIDENT

CIMARON TOWING, INC.

By: Henry A. Billiot
HENRY BILLIOT, PRESIDENT

MARCO TOWING CO.

By: Henry A. Billiot
HENRY BILLIOT, PRESIDENT

PERSONAL ENDORSEMENTS:

Henry A Billiot

Edward Hunsucker

APPENDIX 4

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

JACK NEILSON, INC.	
versus	IN ADMIRALTY
TUG "PEGGY", her engines, tackle, apparel, furniture, and appurtenances, Apache Towing Co., Inc., Marco Towing Co., Inc., Cimmeron Towing Co., Inc., Henry A. Billiot, Edward L. Buras and James J. Buras	NO. C 35 DIVISION "C"

L I B E L

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT, FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION:

The libel and complaint of Jack Neilson, Inc., former owner of the TUG "PEGGY", her engines, tackle, apparel, furniture, appurtenances, etc.; against Apache Towing Co., Inc., Cimmeron Towing Co., Marco Towing Co., Henry A. Billiot, Edward L. Buras, Sr., and James J. Buras, and against all persons intervening for their interest herein, in a cause of possession and breach of contract, civil and maritime, with respect represents that:

I

Libellant, Jack Neilson, Inc., at all times hereinafter mentioned, was and presently is, a corporation organized and existing by virtue of the laws of the State of Louisiana, with its principal place of business within the town of Harvey, Louisiana.

II

Libellant, at all times hereinafter mentioned, was the sole owner of the motor vessel, TUG "PEGGY", official No. 276368, whose approximate dimensions are 58.0 feet in length, 17.9 feet in breadth, and 7.1 feet in depth. The TUG "PEGGY" is now, or will be during pendency of process herein, afloat on the navigable waters of the United States within this District, and, within the jurisdiction of this Honorable Court.

III

Respondent, Apache Towing, Inc., at all times hereinafter mentioned was and presently is, a corporation organized and existing by virtue of the laws of the State of Louisiana, with its principal place of business at Harvey, Louisiana.

IV

Respondent, Cimmeron Towing, Inc., at all times hereinafter mentioned, was and presently is, a corporation organized and existing by virtue of the laws of the State of Louisiana, with its principal place of business at Harvey, Louisiana.

V

Respondents, Henry A. Billiot, d/b/a Marco Towing Co., Edward L. Buras, Sr., and James J. Buras are persons of the full age of majority, and are residents of the Parish of Jefferson, State of Louisiana.

VI

On or about April 13, 1965, libellant entered into a purchase agreement with respondent, Apache Towing Co., Inc. for the [illegible] "PEGGY" for the full amount of $60,000.00. Cimmaron Towing,

Inc., Marco Towing Co., Henry A. Billiot, Edward L. Buras, Sr., and James J. Buras, executed the agreement as guarantors. Pursuant to the terms and conditions of said agreement, the TUG "PEGGY" was duly delivered to Respondent, Apache Towing Co., Inc. at the Port of New Orleans on or about April 17, 1965, for the consideration of monthly payments at the rate of Eight Hundred ($800.00) Dollars payable in advance on or before the 17th day of each successive month. Copy of said agreement is attached hereto marked Exhibit "A" and is made part hereof.

VII

Respondent, Apache Towing Co., Inc. has failed to make monthly payments as provided by the terms and conditions of aforesaid agreement, Respondent, Apache Towing Co., Inc. having voluntarily returned said vessel to Libellant.

VIII

In accordance with the terms and conditions of said agreement dated April 17, 1965, Libellant hereby demands payment in full of the purchase price of $60,000 subject to a reduction by the amount previously paid by Respondent, Apache Towing Co., Inc., of $4,000.00.

IX

Libellant further avers that the TUG "PEGGY" was returned to Libellant in a damaged and deteriorated condition. The cost of repairs to restore said vessel to her same good order and condition

as when received by Respondent is estimated to be $7,500.00. Libellant avers amicable demand to no avail.

X

All and singular the premises are true and correct and within the Admiralty and Maritime jurisdiction of the United States and this Honorable Court.

WHEREFORE, Libellant prays that process in due form of law according to the rules and practice of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against the said TUG "PEGGY", her engines, tackle, apparel, furniture, appurtenances, etc.; that the said Apache Towing Co., Inc., as purchaser and Cimmaron Towing Co., Marco Towing Co., Henry A. Billiot, Edward L. Buras, Sr., and James J. Buras, as guarantors, be cited to appear and answer all and singular the matters aforesaid, that this Court order and decree that Apache Towing Co., Inc., as purchaser, and Cimmaron Towing Co., Marco Towing Co., Henry A. Billiot, Edward L. Buras, Sr. and James J. Buras, as guarantors, be cited to appear and answer all and singular the matters aforesaid; that Apache Towing Co., Inc., as Purchaser and Cimmaron Towing Co., Marco Towing Co., Henry A. Billiot, Edward L. Buras, Sr. and James J. Buras, as guarantors, be condemned to pay Libellant $56,000, and costs in the premises; and that libellant have such other and further relief in the premises as law and justice may be entitled to receive.

MORGAN, VON HOENE and BECKER

By:_____

WILLIAM L. VON HOENE
1216 Int'l. Trade Mart Tower
Number 2 Canal Street
New Orleans, Louisiana 70130
524-9602
Attorneys for Libellant

[redacted]
[redacted], D.
JUNE 18, 1968

APPENDIX 5

[redacted], INC. — NO. 6330
VERSUS — IN ADMIRALTY
VON VEGGY, ETC., ET AL. — SECTION D

[redacted], INC. — NO. 6369
VERSUS — IN ADMIRALTY
VON [redacted], ETC., ET AL. — SECTION D

[redacted], INC. — NO. 6370
VERSUS — IN ADMIRALTY
VON [redacted], ETC., ET AL. — SECTION D

This cause came on for hearing on another day.

Present:

George O'Quet, Esq.,
Attorney for Edward L. and James J. Burns

William L. Van Zoone, Esq.
Attorney for Libelants

IT IS ORDERED that the motion of defendants, Edward [redacted] and James J. Burns excepting to the jurisdiction of this court is granted.

(Sgd) L L M.

30 day appeal time

EPP-3536

3339 New Orleans

JUL 19 1968

MINUTE ENTRY:
OCTOBER 23, 1968
MITCHELL, J.

Appendix 6

CONSOLIDATED CASES

JACK NEILSON, INC.	SECTION "B"
versus	NO. 8235 ✓
TUG "PEGGY", et al	ADMIRALTY
JACK NEILSON, INC.	
versus	NO. 8269
TUG "MARGARET", et al	ADMIRALTY
JACK NEILSON, INC.	
versus	NO. 8270
TUG "CARMEN", et al	ADMIRALTY

This cause came on this day for hearing on motion of Edward J. Burns and James J. Burns, defendants, to be dismissed as defendants.

PRESENT: William L. Van Hoose, Esq.
Attorney for Plaintiff

George O'Daud, Esq.
Attorney for Edward & James Burns

Argument.

IT IS ORDERED that the Court's previous ruling dismissing Edward J. Burns and James J. Burns be, and the same is hereby, held in abeyance and plaintiff is given ten days in which to file a supplemental and amended complaint.

Thomas H. Leech, Esq.

Donald Collins, Esq.

J. P. Delaney, Esq.

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NOV 6 1968

11-6-68 (5) M.J.

FEE
PROCESS
CHARGE
ARREST
DENIAL
APPEARING
DOCUMENT NO.

HIMPEL, PERRY
MITCHELL, J.
FEBRUARY 24, 1969

APPENDIX 7

JACK PHILCO?, INC. NO. 8235

VERSUS IN ADMIRALTY

TUG PEGGY, ETC., ET ALS SECTION F

This cause came on for hearing on another day.

Present:

William Von Hoene, Esq.
Attorney for plaintiff

George O'Dowd, Esq.
Attorney for defendants Edward and James Duras

IT IS ORDERED that the motion of the defendants Edward Duras and James J. Duras excepting to the jurisdiction of this Court be denied. The provisions of the contract are severable and plaintiff may sue in admiralty under the charter provisions of the contract.

FEES
PROCESS
X CHARGE
INDEX
ORDER
HEARING
PDCU

3/5/69

MAR - 5 1969

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